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FEDERAL EXPRESS

Lisa M. Chandler

March 9, 1999

VIA FEDERAL EXPRESS

**Ms. Magalie Roman Salas**

Secretary

Federal Communications Commission

445 Twelfth Street, S.W., Room TW-A325

Washington, D.C. 20554

**Re: MM Docket No. 93-25****Petition for Reconsideration of the Final Regulatory Flexibility Analysis**

Dear Ms. Salas:

On behalf of the Small Cable Business Association ("SCBA"), we enclose an original and eleven (11) copies of the above-referenced Petition for Reconsideration.

In addition, we provide a "FILE COPY." We ask that you date-stamp and return it in the enclosed Federal Express envelope.

If you have any questions, please call us.

Very truly yours,

*Lisa M Chandler*

Lisa M. Chandler

Enclosures

cc: Small Cable Business Association

cc: Chairman William E. Kennard  
 Commissioner Michael Powell  
 Commissioner Gloria Tristani  
 Commissioner Susan Ness  
 Commission Harold Furchtgott-Roth  
 Regina Keeney, Chief, International Bureau  
 Rosalee Chiara, Deputy Chief, Satellite Policy Branch

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**ORIGINAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**In the Matter of**

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**Implementation of Section 25  
of the Cable Television  
Consumer Protection and  
Competition Act of 1992**

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**Direct Broadcast Satellite  
Public Interest Obligations**

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**MM Docket No. 93-25**

**Petition for Reconsideration  
of the  
Final Regulatory Flexibility Analysis**

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March 9, 1999

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**MM Docket No. 93-25**

# Petition for Reconsideration of the Final Regulatory Flexibility Analysis

## I. INTRODUCTION

The Small Cable Business Association ("SCBA") files this Petition for Reconsideration to address critical deficiencies in the Commission's Final Regulatory Flexibility Analysis ("FRFA"). The Commission has carried over its failure in the underlying rulemaking to perform the comprehensive analysis Congress required into its FRFA analysis. Consequently, the Commission has not complied with its requirements under the Regulatory Flexibility Act to consider the impact of its actions, or its failure to adopt rules, on small cable businesses.

SCBA files this Petition on behalf of its nearly 300 member smaller cable businesses and their small cable systems that serve 2.3 million subscribers nationwide. The majority of SCBA's members have fewer than 1,000 subscribers in total. SCBA was formed in 1993 by smaller independent cable businesses to represent the collective interests of its

members and to speak with a unified voice regarding issues affecting their businesses. SCBA has represented its members in this proceeding as a commenting party.

## **II. IMPROPERLY LIMITED SCOPE**

The Commission improperly limited the scope of its FRFA. Congress mandated the scope of the underlying rulemaking. Congress' mandate contained two components: (1) to determine DBS public interest programming requirements; and (2) to determine and regulate DBS' impact on localism.<sup>1</sup> The Commission's FRFA addresses only the first component of the rulemaking, not the second. This failure to conduct a FRFA that covers the entire scope of the rulemaking violates both the Regulatory Flexibility Act<sup>2</sup> and the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>3</sup>

## **III. HARM TO SMALL CABLE BUSINESSES**

As highlighted in SCBA's comments in the underlying rulemaking, small cable businesses are local programmers.<sup>4</sup> They originate some local programming and retransmit the content of other local programmers, principally broadcasters. Consequently, the impact of DBS, as either a distributor of generic national programming or as a provider of some, but not all, local programming, will adversely impact localism and small cable.

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<sup>1</sup> See 47 U.S.C. § 335(a).

<sup>2</sup> 5 U.S.C. § 601.

<sup>3</sup> 5 U.S.C. § 601 *et seq.*

<sup>4</sup> See *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Service Obligations*, Comments of the Small Cable Business Association in MM Docket No. 93-25 (filed April 28, 1997) at 7-16.

The failure to adequately consider the impact, especially the harm, that DBS inflicts on localism, and the failure to promulgate rules to offset that harm, adversely impact small cable businesses. The Commission provides no analysis of the adverse impact its failure to take statutorily mandated action has on small cable businesses.

#### **IV. CONCLUSION**

The Commission has failed to fulfill its statutory obligation in this rulemaking. It also failed to carry out statutory obligations by similarly ignoring the analysis in this FRFA. SCBA has asked the Commission to reconsider its actions in the underlying rulemaking. It also requests that the Commission comply with the letter and the spirit of the Regulatory Flexibility Act and provide a complete and accurate analysis of the impact on small cable businesses of its decision on reconsideration.

Respectively Submitted,

**SMALL CABLE BUSINESS  
ASSOCIATION**

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March 9, 1999

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